

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

IN RE: CROP INPUTS ANTITRUST  
LITIGATION

)  
) 4:21-MD-2993-SEP  
)  
) ALL CASES  
)

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants hereby respond to Plaintiffs' Notice of Supplemental Authority ("Notice"), dated September 30, 2022. Docket No. 217. The Notice provides the Court with a copy of a complaint recently filed by the U.S. Federal Trade Commission ("FTC") and various states against two of the Defendants, Syngenta Corporation and Corteva, Inc. ("FTC Complaint"). Like the previous Notice of Supplemental Authority that Plaintiffs filed about the FTC investigation, Docket No. 211, the new Notice does not provide any supplemental authority for the Court to consider. A pleading is not authority.

In any event, the FTC Complaint does not provide the Court with any information pertinent to Plaintiffs' claims. The FTC Complaint, instead, confirms that the FTC investigation was wholly unrelated to Plaintiffs' allegations in this case. In the Notice, Plaintiffs describe their allegations here as purporting to allege "'a group boycott of electronic sales platforms,'" as well as "'price fixing in the manufacturing, wholesaling, and retailing of crop inputs.'" Docket No. 217 at 2 (quoting Docket No. 1). Yet the FTC Complaint does not allege an agreement among Defendants to boycott anyone, much less an agreement to boycott electronic sales platforms in particular.

Neither (and contrary to Plaintiff's representation, *id.* at 2) does the FTC Complaint allege price fixing of any sort.

The FTC itself has described its Complaint as focused on so-called "generic pesticides." FTC Press Release, *available* at <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>. Specifically, the complaint, as directed at Syngenta, centers on its "loyalty program" with respect to only three crop protection products: the fungicide azoxystrobin, and the herbicides mesotrione and metolachlor. FTC Compl., Ex. A to Docket No. 217 at ¶¶ 83-115. As to Corteva, the complaint centers on its separate loyalty program with respect to three different crop protection products: the herbicides rimsulfuron and acetochlor, and the insecticide and nematocide, oxamyl. *Id.* at ¶¶ 115-156. The FTC's allegations are far afield from Plaintiffs' Complaint here, which centers on a boycott of electronic sales platforms, and names a dozen companies (at multiple levels of distribution) as defendants in addition to Syngenta and Corteva. Moreover, Plaintiffs' complaint seeks to implicate every type of crop protection product and each and every seed sold by Defendants in the U.S. (rather than the six distinct product markets that the FTC alleges). Docket No. 104 at ¶¶ 1, 3, and 8. In short, the FTC Complaint does not render the allegations here any more plausible.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2022, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record.

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